



United States Department of the Interior

FISH AND WILDLIFE SERVICE Mountain-Prairie Region



IN REPLY REFER TO:

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134 Union Blvd.
Lakewood, Colorado 80228-1807

NOV 07 2005

Mr. Mitchel W. Pace
P.O. Box 280
276 N. 200E
Loa, Utah 84747

Dear Mr. Pace:

It is our pleasure to provide you with the enclosed Safe Harbor Agreement between the U.S. Fish and Wildlife Service and yourself for habitat restoration for the Utah prairie dog on a portion of your property. Also enclosed are exhibits that document our compliance with policies and regulations and a permit for incidental take of prairie dogs under certain conditions.

If you have questions or comments, please contact our prairie dog biologist, Elise Boeke, at (801) 975-3330, extension 123. We look forward to working with you to implement this agreement.

Sincerely,

Elliott Suttie
ACTING
Deputy Regional Director

Enclosures

cc: Ted Toombs, Environmental Defense
Tom Jarmann, Natural Resources Conservation Service



SAFE HARBOR AGREEMENT

1.0 INTRODUCTION

This Safe Harbor Agreement (Agreement), effective and binding on the date of last signature below, is between Mitchel W. Pace (Cooperator), and the U.S. Fish and Wildlife Service (Service), hereinafter referred to as "the Parties":

Cooperator: Mitchel W. Pace
P. O. Box 280, 276 N. 200E
Loa, Utah 84747
Phone: 435-836-2303

Service: U.S. Fish and Wildlife Service
2369 West Orton Circle, Suite 50
West Valley City, UT 84119
Contact: Field Supervisor
Phone: 801-975-3330

Agreement/Tracking Number: TE - 106063

This Agreement covers the following species: Utah Prairie Dog (*Cynomys parvidens*). This species is considered the "covered species" as defined in the Service's final Safe Harbor Policy (64 Federal Register 32717).

This Agreement covers the following property: The property covered by the Agreement and Permit to be issued simultaneously therewith is the approximately 22-acre Pace property (Property), located in Sevier County, Utah, approximately 3 miles north of the town of Koosharem, along Highway 143 in Township 26S, Range 1W, S24. The property is delineated on the map included with the "Conservation Plan" appended hereto. The Conservation Plan was prepared for the property by the Natural Resources Conservation Service (NRCS), U. S. Fish and Wildlife Service (Service) and Environmental Defense. This Property is considered the "enrolled property" as defined in the Service's final Safe Harbor Policy.

Agreement/Permit Duration: This Agreement becomes effective upon issuance by the Service of the Section 10(a)(1)(A) enhancement of survival permit (hereinafter referred to as the "Permit") described in Part 5 hereof, and will be in effect for 15 years. The requested Permit will remain in effect for 25 years. The additional 10 years of permit duration beyond the term of the agreement is approximately the amount of time that the Cooperator's conservation measures are expected to benefit the Utah prairie dog without further active management.

2.0 AUTHORITY AND PURPOSE

extend onto the Property. The Property slopes generally to the west and is bordered by a grazed wetland on that side. An irrigation ditch runs the length of the Property on its eastern border and provides water to irrigate the pasture. No buildings are located on the Property.

3.2 Description of Covered Species

The UPD is a member of the genus, *Cynomys*, and one of five species of this genus in North America. It is endemic only to southwestern Utah. Numbers of the species have declined from an estimated 95,000 individuals in 1920 to 5,000 – 10,000 today (Crocker-Bedford and Spillett 1981, Bonzo and Day 2001). The species is currently federally listed as threatened. UPDs inhabit relatively open, grassy areas within shrubland ecosystems. A full description of the UPD and its habitat requirements can be found in the Utah Prairie Dog Recovery Plan and the Interim Conservation Strategy. According to this plan, actions needed to recover the species include managing prairie dog colonies by developing and implementing site-specific management plans for each colony including modifying and managing habitat according to specific guidelines.

3.3 Description of Baseline Conditions

There are several UPD colonies within the Grass Creek Valley near the Property. An active five acre colony exists on private land immediately to the south of the Property. This colony extends to the boundary of the two properties, but does not extend onto the Pace Property due to vegetation conditions including dense sagebrush and the lack of suitable forage. Conservation measures agreed to will provide additional habitat immediately adjacent to the existing colony on the Cooperator's land, and allow the existing adjacent colony to naturally expand onto the Property. The Service has determined that, although UPDs do not currently occupy the Property, the land should be capable of supporting them once vegetation conditions are improved.

Based on this site assessment, there are no UPD baseline responsibilities on the enrolled property, reflecting the fact that at the present time there are no restrictions on the use of the enrolled property as a result of the Endangered Species Act's protection of the UPD.

Current Vegetation Conditions and Grazing Management

The Pace Property is composed of dense, decadent sagebrush with a sparse under-story of mostly non-native grasses. It is flood irrigated, creating some gullies throughout the pasture.

The Property is grazed from June 1 – October 1 by 10-18 animal units (cattle), or about 40-72 animal unit months (AUMs) annually. Sagebrush is sufficiently dense to hinder UPD colonization. The Property has only a perimeter fence. Cross-fencing is needed to manage grazing within the pasture. This will also allow more flexibility to graze at rates that encourage UPD expansion onto the site (See appendix 1 of Attachment 1)

- 3) *Irrigation improvements*: Irrigation improvement will be installed to increase productivity of forage and to reduce soil erosion into nearby wetlands.
- 4) *Grazing management*: Grazing will be managed on the entire 22 acres to better distribute cattle for the purpose of encouraging prairie dog expansion, reducing forage impacts, and promoting sufficient vegetative recovery after treatments.
- 5) *Monitoring*: Monitoring designed to assess basic vegetation response to treatments, ensure that the vegetation response generally meets the habitat standards set forth by the Utah Prairie Dog Recovery Team, monitor the potential expansion of the adjacent prairie dog population, and assess whether additional brush treatments or grazing changes are necessary will be implemented.

If UPDs do occupy the Property in the future, the Cooperator agrees only to spot spray brush using Velpar herbicide in areas where UPDs are present. No other herbicides will be applied in areas where UPDs are present at any time.

These conservation measures are expected to result in the following net conservation benefits to the covered species:

- Increased availability of foraging (forage quantity and quality) and visual surveillance habitat for UPDs.
- Increased UPD numbers and colony size.

Nothing in this Agreement prohibits the Cooperator, after first notifying the Service, from applying for control measures pursuant to a Certificate of Registration under the State of Utah's regulations relating to take of non-game mammals as authorized under section 4(d) under the Endangered Species Act, if such regulations are in place at the time of the request, and as long as such control measures are not inconsistent with the purpose of this Agreement to allow the expansion onto and continued use of the Property by Utah prairie dogs from adjacent lands. If the Cooperator applies for a Certificate of Registration, the Service will determine whether control is allowed and the level of control consistent with this Agreement, at that time.

The Service has determined that the Cooperator's conservation measures, as described in this Agreement and the attached Conservation Plan, will provide the net conservation benefits listed above for the covered species. It has also determined that the duration of the Agreement and associated Permit is sufficient to achieve these conservation benefits.

4.2 Take

If the covered species occupies the restored habitat, take of those species could occur as a result of a variety of activities. For example, it is possible that ranch vehicles could kill prairie dogs during the course of normal ranching and associated irrigation activities. It is also possible that irrigation could flood prairie dog burrows. The Cooperator will ensure that irrigation flow with the newly installed system is not at excessive levels, which could lead to flooding of burrows. The Agreement authorizes take of the covered

such a situation, and will make reasonable accommodations to the Service for surveying for and/or relocating affected individuals or populations of the covered species prior to the action(s). The Parties acknowledge that survey and relocation may be precluded by certain urgent or emergency situations. The Parties will work cooperatively to avoid impacts to the covered species. The Cooperator will allow the Service or its agent to dust the colony (if prairie dogs occupy the site) for fleas in the event of a plague outbreak.

4.6 Adjacent Landowners

Adjacent landowners will be encouraged and given the opportunity to enroll in separate agreements to provide assurances and take authority in the event of UPD migration. Non-participating private landowners are not covered under the take permit associated with this Agreement, although the Service will use the maximum flexibility allowed under the Act to address neighboring properties. If a neighboring landowner requests the opportunity to receive safe harbor assurances, the Service will determine the baseline applicable to the neighboring property and negotiate a separate agreement between the neighboring landowner and the Service that meets the requirements of Part 14 of the Service's Safe Harbor Policy.

5.0 RESPONSIBILITIES OF THE PARTIES

5.1 Cooperator Responsibilities

The Cooperator will make a good faith effort and use due diligence to implement the conservation measures outlined in the attached Conservation Plan, and other provisions of this Agreement and to adhere to the Terms and Conditions of the Permit. The Cooperator will work in partnership with the Parties to assure sufficient funding and other resources necessary to implement the Agreement. If the cooperator does not receive sufficient funding,

With reasonable advance notice, the Cooperator shall allow Service personnel, or other properly permitted and qualified persons designated by the Service, to enter the enrolled property at reasonable hours and times for the general purposes directly related to this Agreement.

The Cooperator shall allow personnel of the Service, UDWR, or its Agent to visit the property at agreed upon times each year of the Agreement to monitor compliance with the agreed-upon conservation measures, to conduct annual counts of UPDs, and to assess the potential expansion of the UPD colony.

5.2 Service Responsibilities

The Service will coordinate with the Cooperator to implement the Agreement. As noted above, the Service will arrange with the Cooperator to visit the property annually to assess that the agreed-upon conservation measures contained in this Agreement are being accomplished.

Permit. The Service has determined that this level of take will not appreciably reduce the likelihood of survival and recovery in the wild of the UPD.

7.0 MODIFICATIONS

7.1 Modifications of the Agreement.

Any party may propose amendments to this Agreement, as provided in 50 CFR 13.23, so long as all parties agree to the request in writing. Requests should include a statement of the proposed modification, the reason for it, and the expected results. The Parties will use their best efforts to respond to the proposed modifications within 60 days of receipt. Proposed modification will become effective upon written approval of all Parties.

7.2 Termination of Agreement.

As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), the Cooperator may terminate the Agreement for circumstances beyond the Cooperator's control. In such circumstances, the Cooperator may return the enrolled property to baseline conditions even if management activities identified in Attachment 1 have not been fully implemented, provided that the Cooperator gives the Service notification required in Part 4.2 above prior to carrying out any activity likely to result in the taking of the covered species. If the Cooperator terminates the Agreement for any other reason, the permit referenced in Part 5.2 above shall immediately cease to be in effect, and the Cooperator may be liable to repay a pro-rated portion of the costs associated with the habitat improvements.

7.3 Renewal of Agreement and Permit.

The Agreement can be renewed or extended, with or without modification, for a specified period with the approval of all Parties. If the Agreement is renewed or extended, the Permit duration will be extended by a like amount. If the Service does not agree to renew the Agreement, at the Cooperator's request, the Service will trap and remove any existing UPDs at the end of the Permit term.

7.4 Permit Suspension and Revocation.

The Service may suspend or revoke the permit referred to in Part 5.2 above for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would result in jeopardy of the covered species (50 CFR 13.28 (a)). In such circumstances, the Service will exercise all possible measures to avoid revoking the permit.

8.0 OTHER MEASURES

8.1 Remedies

8.6 No Third-Party Beneficiaries.

This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

8.7 Other Listed Species, Candidate Species, and Species of Concern.

Although the Service regards it as unlikely, the possibility exists that other listed, or candidate species, or species of concern may occur in the future on the enrolled property as a result of the management actions specified in Attachment 1. In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, Cooperator will implement the no-take/no-jeopardy measures identified by the Service for that species until the permit is amended to include such species, or until the Service notifies the Cooperator that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of, the non-covered species.

8.8 Notice and Reports.

Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the person listed below as appropriate.

Field Supervisor
U.S. Fish and Wildlife Service
2369 West Orton Circle, Suite 50
West Valley City, UT 84119

10.0 ATTACHMENTS

Attachment 1. Pace Conservation Plan

Description and Purpose

This is a cooperative project between Mitchel W. Pace (the Cooperator), the US Fish and Wildlife Service (USFWS), the Natural Resources Conservation Service, and Environmental Defense. These parties have agreed to work together to restore degraded pastureland on the property (Property) owned by Mr. Pace for the purpose of improving habitat quality for the threatened Utah Prairie Dog (*Cynomys parvidens*). The broad purpose for doing this work is to create a conservation benefit for the Utah Prairie Dog (UPD) on private lands, and more specifically to increase the likelihood that an existing colony on neighboring lands will expand onto the Cooperator's land. Private lands conservation efforts for this species are considered important, if not essential, for the species' long-term survival. Through this project, the parties seek to improve pastureland, as well as prairie dog habitat. Regulatory assurances and financial incentives provided by the parties will accompany this Conservation Plan.

The total length of this Conservation Plan is 15 years. It is expected that the conservation measures will be completed within that time, and that no further treatments will be necessary to accomplish significant conservation benefit for the UPD.

The Cooperator will enter into a 5-year contract with the NRCS, and a 15-year contract with the Service Partners for Fish and Wildlife Program to provide funding and technical assistance for this work. These agencies and UDWR will cooperate to implement the conservation measures and monitoring described in this Plan. If for some reason the cooperator

Property Description

The Property is a 22-acre irrigated pasture composed of dense, decadent sagebrush with a sparse under-story of mostly non-native grasses. It is currently flood irrigated, which is creating some gullies throughout the pasture. Private lands border the Property on three sides. The private land immediately adjacent to the Property contains an active Utah Prairie Dog colony approximately 5 acres in size. This colony abuts the fence-line but does not extend onto the Property. The Property slopes generally to the west and is bordered by a grazed wetland on that side. An irrigation ditch runs the length of the Property on its eastern border and provides water to irrigate the pasture. There is also an unpaved road on this property border. No buildings are located on the Property. The brush treatments, re-seeding, and irrigation measures described here will be undertaken on 17 acres. Grazing management will occur on the entire 22-acre parcel.

The Property is currently grazed from June 1 – October 1 by 10-18 animal units (cattle), or about 45 animal unit months (AUMs) annually.

A qualified range ecologist with NRCS will oversee all the treatments in coordination with the Service.

- 1) *Brush treatments.* The brush treatments will occur on approximately 17 acres (see Appendix 1 for location of treatments). Sagebrush will be reduced in density to approximately 3% cover or less, as recommended by the Utah Prairie Dog Recovery Plan, by using a tandem disk. Two passes in opposite directions will be sufficient to reduce the sagebrush canopy. Success of this treatment will be determined by evaluating re-growth or reoccurrence of sagebrush after sufficient time has passed. The landowner will perform this work as part of his cost-share contribution to the project.
- 2) *Re-seeding.* Re-seeding is needed to improve vegetation production. The re-seeding will occur in the same location as the brush treatments (Appendix 1). The seedbed will be plowed, disked, and leveled prior to planting. The seedbed will be prepared free of weeds and firm enough to leave no more than ½ inch shoe print. Seeding will be drilled at ¼ inch depth with a broadcast seeder attached to a tractor on the second pass, or by pulling a rangeland or no-till drill behind a tractor. The seed mix will consist of tame pasture grasses that can tolerate irrigation and intense grazing pressure, along with forbs to provide increased nutrient quality for prairie dogs (see Appendix 2). Ammonium Nitrate will be disked in with the seed. Irrigation water will be applied in light frequent applications for the first 2 months of establishment. Water stress may require additional irrigation or replanting of failed stands. If prairie dogs are not present on the site, the Cooperator may control the invasion of undesirable plants, insects, and diseases with herbicide and pesticide when an infestation effects stand survival. If UPDs occupy the Property in the future, the Cooperator will be allowed only to spot spray brush using Velpar herbicide in areas where UPDs are present. No other herbicide treatments will be applied in areas where UPDs are present, in the wet meadow pasture, or anywhere else outside of the 17-acre brush treatment area.
- 3) *Irrigation improvements.* The irrigation system will be improved on the parcel to increase water use efficiency, reduce gulying, and distribute water more evenly. It is anticipated that this will greatly improve the suitability of the vegetation for prairie dogs, since moisture rich vegetation is often a limiting factor in dry habitats. The current flood irrigation system is uncontrolled flood that comes out of a dirt ditch and into a dirt head-ditch that runs down the sides of the pasture. This is about 20% efficient in delivering irrigation for the pasture. Also, the current system has the potential to flood prairie dog burrows that could otherwise be established on the site. A 12 inch gated pipe will be installed from the head of the field down both sides of the property. This will improve the irrigation efficiency to about 35-40%, and allow prairie dogs to occupy the site without the burrows being flooded. The Cooperator will take steps to ensure that irrigation flow with the newly installed system is not at excessive levels or unevenly applied, which could lead to flooding of burrows. The Cooperator currently owns

booklet that NRCS will provide and will present these records to the NRCS annually to ensure that the stubble heights identified above are obtained and that grazing is managed in response as described above. An NRCS range specialist will review these pasture condition sheets and proper grazing use for the life of the contract (5 years), and will visit the site at least once in the spring and once in the fall or as often as possible. The Service will monitor grazing in coordination with NRCS, and the response of the neighboring UPD colony to determine whether potential expansion has occurred for the life of the Agreement (15 years). This colony will be incorporated into UDWR annual colony counts and this annual count number will be obtained by the Service to help assess the success of the treatments.